89-1056

Supreme Court, U.S.
FILED
DEC 28 1989
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1989

THE DEPARTMENT OF HEALTH SERVICES OF THE STATE OF CALIFORNIA AND ITS DIRECTOR, KENNETH KIZER

Petitioners,

v.

CITIZENS ACTION LEAGUE, et al.

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOHN K. VAN DE KAMP
Attorney General

JOHN J. KLEE, JR.
Deputy Attorney General
(Counsel of Record)

455 Golden Gate Avenue, 6th Fl.
San Francisco, California 94102
Telephone: (415) 557-1816

Attorneys for Petitioners

QUESTION PRESENTED

Under certain circumstances, the Social Security Act allows States to recover the costs of Medicaid benefits from a beneficiary's "estate" following his or her death. The question presented by this Petition is whether the word "estate", which is not defined by Congress, must be given a narrow, technical construction (i.e., the same as "probate estate") or whether, as determined by the U.S. Department of Health and Human Services, California may properly seek recovery from persons who receive joint tenancy property by right of survivorship as a result of the death of the Medicaid beneficiary.

PARTIES TO THIS PROCEEDING

Petitioners Department of Health Services of the State of California and Kenneth Kizer, its Director, were two of the three defendants/appellees in the courts below. The other defendant/appellee was the Secretary of the United States Department of Health and Human Services (currently Louis W. Sullivan).

In addition to respondent Citizens Action League, the other plaintiffs/appellants below were Angelina Aiello, Myrtle Suntken, Gestner Hodge, and Mary Dunker, who sued on behalf of themselves and others similarly situated. The class was certified by the district court to include all California residents and landowners who (1) have succeeded or will succeed to real property through right of survivorship upon the death of a Medicaid recipient and (2) have been or will be subject to a claim for recovery of the costs of Medicaid benefits provided by California to the decedent.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	
PARTIES TO THE PROCEEDING	
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
OPINIONS BELOW	1
STATEMENT RE: JURISDICTION	2
STATUTES INVOLVED	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE PETITION	4
ARGUMENT	6
I THE COURT OF APPEALS IMPROPERLY IGNORED CONGRESSIONAL INTENT	6
II THE COURT OF APPEAL'S NARROW CONSTRUCTION OF "ESTATE" CREATES DISTINCTIONS WITHOUT A DIFFERENCE, NOT SUPPORTED BY CONGRESSIONAL INTENT	12
CONCLUSION	16

TABLE OF AUTHORITIES

Cases	Page
In the Matter of Estate of Harris (1976) 387 N.Y.S.2d 796	7
Kizer v. Hannah (1989) 48 Cal.3d 1	13
Matter of Samuelson (1985) 493 N.Y.S.2d 784	9, 10, 11
Nass et al. v. Perales, et al. USDC ED NY; September 3, 1986	9, 11

STATUTES AND OTHER AUTHORITIES

	Page
Welfare and Institutions Code § 14009.5	3
28 U.S.C. § 1254(1)	2
31 C.J.S. Estates, § 1	6
41 C.J.S. Husband and Wife § 34, p. 458	8
42 U.S.C. § 602(a)(7)(B)	12
42 U.S.C. § 1396	12
42 U.S.C. § 1396a	2
42 U.S.C. § 1396b(a)(1)	12
42 U.S.C. § 1396p(b)	8, 13, 16
42 U.S.C. § 1396p(b)(1)	2
42 U.S.C. § 1396p(b)(1)(B)	2, 9
CCH Medicare and Medicaid Guide pp. 35,874	9
Newsweek, "Do Only the Suckers Pay?" December 18, 1989, p. 52	5
Powell on Real Property § 617(3) (1986)	7

No.

IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1989

THE DEPARTMENT OF HEALTH SERVICES OF THE STATE OF CALIFORNIA AND ITS DIRECTOR, KENNETH KIZER

Petitioners

v.

CITIZENS ACTION LEAGUE et al.,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 887 F.2d 1003. The decision of the district court is reported at 670 F.Supp. 874 (N.D. Cal. 1987).

STATEMENT RE: JURISDICTION

The decision of the Court of Appeals was filed on October 23, 1989.

No petitions for rehearing were filed in the Court of Appeals.

This Court has jurisdiction to review cases in Courts of Appeals by way of writ of certiorari. 28 U.S.C. § 1254(1). This Court may grant certiorari when a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court. Supreme Court Rule 17.1 (c).

STATUTES INVOLVED

42 U.S.C. section 1396a:

> "(a) A State plan for medical assistance must --. . . (18) comply with the provisions of section 1396p of this title with respect to liens, adjustments and recoveries of medical assistance correctly paid, and transfers of assets [.]"

42 U.S.C. § 1396p(b)(l):

> "No adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan may be made, except ---
> . . . (B) in the case of any other individual who was 65 years of age or older when he received such assistance, from his estate.

STATEMENT OF THE CASE

This action was commenced by plaintiffs in state court as a class action challenging the validity of the state

statute (Welfare and Institutions Code § 14009.5) to the extent it allowed the recovery of properly paid Medicaid benefits from persons who, as joint tenants, received property by right of survivorship upon the death of a Medicaid beneficiary. (Section 14009.5, as it read both before and after the amendment effective January 1, 1990, is set forth in full in the Appendix. The amendment does not affect the issue in this case.) The contention was that, as so applied, the California statute violated a federal Medicaid statute, namely, 42 U.S.C. § 1396p(b)(1)(B). Since the complaint raised a question which arose under federal law, the State removed the case to federal court under 28 U.S.C. § 1441(a).

Because the monies involved were financed 50 percent by the federal government, the district court ordered the Secretary of the U.S. Department of Health and Human Services ("HHS") joined as a defendant.

The plaintiffs moved for summary judgment. In opposition to the motion, HHS filed a brief in which it set forth the federal agency's position, namely, that the federal statute should not be narrowly construed so as to limit recovery only from those persons who acquire property from a deceased Medicaid beneficiary by way of a "probate estate."

The district court denied the summary judgment motion on the ground that the narrow construction of "estate" sought by plaintiffs would create a distinction not consistent with congressional intent by creating a loophole for those clever or shrewd enough to use joint tenancies as a probate avoidance device.

The plaintiffs appealed, and the Court of Appeals, in a 2 to 1 decision, reversed. The majority (Judges Tang and O'Scannlain) refused to give any deference to the federal agency's interpretation of the statute it is charged with administering and held that the "common law" meaning of "estate" did not include joint tenancies and that, therefore, the California statute violated the federal statute. The dissent (Judge Canby) disagreed, stating that the federal agency's interpretation afforded a "rational system of recovery" more in line with "congressional purposes behind the statute."

REASONS FOR GRANTING THE PETITION

This case raises an important question which should be settled by this Court. If allowed to stand, the decision of the Court of Appeals will severely limit the ability of California, and other States as well, to recover federal and State funds needed to meet the ever increasing costs of the federal-State Medicaid program,

which is designed to provide basic health care to needy individuals and families.

This is not just an isolated problem. In the December 18, 1989, issue of *Newsweek*, in an article on page 52 entitled "Do Only the Suckers Pay?", the writer notes that there is a growing army of "poverty makers" who, through the use of perceived "loopholes" in the Medicaid law, are able to put persons with substantial assets on the Medicaid rolls at public expense. The article recognizes the wisdom in allowing persons to keep their homes while they are alive, but adds,

> "But when they die, the public ought to be repaid. Those assets should be tapped to recover all the nursing-home costs. The heirs should inherit only what's left, with no shell games allowed.
>
> "So far, only a few states have asset-recovery plans, Oregon's being by far the best. Some states have been blocked by legal challenges or intimidated by senior-citizen lobbies. California, which recovered an estimated $25 million in fiscal year 1989, has just been derailed by a federal court decision which prevents the state from collecting against any property that is jointly held. This decision opens up yet another loophole. If you're in a nursing home, you could put your house in your children's names as well as your own, and Medicaid couldn't lay a glove on it.
>
> "These abuses of the taxpayer can't go on. Too many of the true poor are shut out of Medicaid (including the elderly poor outside nursing homes), while the false poor are unfairly demanding support."

As explained below, the Court of Appeal erred when it concluded that the federal statute had to be construed so as to create that "loophole."

ARGUMENT

I

THE COURT OF APPEALS IMPROPERLY IGNORED CONGRESSIONAL INTENT

The decision of the Court of Appeals majority is very simplistic - - under the "plain meaning" (i.e., "common law" meaning) of the word, "estate" does not include property formally held in joint tenancy. Therefore there is no need to even look to or consider congressional intent in enacting the statute. The Court of Appeal is wrong.

The word "estate" does not have a fixed meaning. As stated by Corpus Juris Secundum, one of the most respected legal treatises in the nation,

> "As used in statutes, if not expressly defined, the import of the term 'estate' depends in a great degree on its association with other expressions, and must be found from the context and purpose of the statute, and the fixed absolute sense of the word in the abstract must give way to the connection in which it is used." *31 C.J.S. Estates §1, page 9* (footnotes omitted).

Since "estate" was not defined by Congress in the

Medicaid statute in question, the majority should have looked to the "purpose of the statute", rather than simply ignore it.

That approach is consistent with the principal authority relied upon by the majority in its opinion, namely, *Powell on Real Property* § 617 (3) (1986). In the cited paragraph, the treatise writer states, in discussing the concept of survivorship,

> "The joint tenant who survives the other cotenants takes the entire *estate*; the *estates* of deceased joint tenants have no interest." (Emphasis added.)

In that single sentence, the word "estate" is used in two completely different ways. In the first half of the sentence, the word "estate" refers to the piece of property that was held in joint tenancy. In the second half of the sentence, the word "estates" refers to the properties of decedents subject to probate administration. Since the *Powell* treatise itself uses the word "estate" with two completely different meanings in one sentence, it hardly constitutes authority for the proposition that the word "estate" has only one "common law" or "plain language" meaning.

Equally as unpersuasive is the majority's citation to the New York Surrogate Judge's decision *In Matter of Estate of Harris* (1976) 387 N.Y.S. 2d 796. In that case

the State was seeking reimbursement from the probate estate of the deceased wife for the costs of Medicaid benefits paid for the husband. When the husband died, no claim could have been made from his probate estate or from a person receiving any property by virtue of his death because the predecessor of 42 U.S.C. § 1396p(b), like California law today, precluded any recovery if there is a "surviving spouse", which there was in Mr. Harris' case. That situation could not occur here. The statute expressly prohibits the Director from making a claim when there is a "surviving spouse." Moreover, the case dealt with estates by entirety, not joint tenancies. As stated in a leading treatise:

> "Strictly speaking, a tenancy by entirety is not a joint tenancy but is a sole tenancy, and, while the two estates resemble each other and possess some qualities in common, yet they differ both in form and substance and are distinguishable, . . ." 41 C.J.S. Husband and Wife, § 33, page 457, (footnotes omitted).

> "An estate by entirety, which is a form of coownership held by husband and wife with right of survivorship, is defined as an estate held by husband and wife by virtue of title acquired by them jointly after marriage. It is a peculiar and anomalous estate. It is a sui generis species of tenancy, . . ." 41 C.J.S. Husband and Wife, § 34, page 458, (footnotes omitted).

The decision of the Court of Appeals in this case stands alone in its refusal to interpret 42 U.S.C. § 1396p(b)

without regard to overall congressional intent. Other courts have used common sense and rejected that "plain language" approach.

One such case is *Nass et al. v. Perales, et al.* (USDC ED NY; September 3, 1986) CCH Medicare and Medicaid Guide pp. 35,874. In *Nass*, the wife was a Medicaid recipient who, prior to her death, received $90,502.93 in Medicaid benefits. Her probate estate was valued at $2,118.00, not nearly enough to satisfy New York's claim for Medicaid reimbursement. Shortly before she died, her husband died, leaving approximately $225,000. New York filed its claim for $90,502.93 in the husband's probate estate. The adult children claimed that New York could not seek reimbursement from their father's estate. Literally, they were correct, as § 1396p(b)(1)(B) permits recovery only from the estate of the Medicaid recipient. But the Court did not apply the statute literally. Rather, the Court examined the history and purpose of the federal statute and concluded that Congress did not intend to prohibit a State from seeking Medicaid reimbursements from those persons who would be otherwise liable under the State's family responsibility laws.

Another significant case ignored by the Court of Appeals is *Matter of Samuelson* (1985) 493 N.Y.S. 2d 784,

which was decided by the Appellate Division of the Supreme Court of New York. In *Samuelson*, the decedent was a Medicaid recipient who had received $28, 801.88 in benefits prior to her death. She was survived by two adult children -- an adult son who was normal and an adult daughter who was legally blind and totally and permanently disabled. The decedent's estate consisted of a one-half interest in the home in which she resided until her death. By will, she left her interest in the home to her son, who already owned the other one-half interest in the home. She left nothing to her disabled daughter. New York sought reimbursement of the Medicaid expenses from the mother's probate estate. The administrator rejected the State's claim, relying on the State statute which was copied from § 1396p(b). Literally, the administrator was correct in rejecting the claim. The Act specifically prohibits recovery from the Medicaid recipient's estate if he/she has a "surviving child who . . . is blind or permanently and totally disabled." 42 USC § 1396p(b)(2)(A).

Nevertheless, the *Samuelson* court refused to apply the statute literally. The Court stated,

> "At the outset, we acknowledge, as Surrogate Laurino did, that a literal reading of [the statute] leads to the conclusion that respondent's claim is statutorily unenforceable since the decedent was

> survived by a blind and totally and permanently disabled daughter. Moreover, as a general rule, where the statutory language is clear and unambiguous, the courts will not inquire into extrinsic evidence in order to determine legislative intent. [Citations.] However, in an appropriate situation, the court is not precluded from departing from the literal letter of a statute in order to sustain the legislative objective of the statutory scheme. 'In the interpretation of statutes, the spirit and purpose of the act and the objects to be accomplished must be considered and given effect, and the literal meanings of words are not to be adhered to or suffered to defeat the general purpose and manifest policy intended to be promoted.' [Citations.] With this premise, we conclude that the literal interpretation of [the statute], urged by petitioner herein, would contravene and frustrate the legislative objective sought to be achieved by the statute." 497 NYS 2d, at 787.

The Court went on to examine the legislative materials and concluded the Congress intended to protect only a limited group of people, to wit, the spouse, minor children and disabled children of the Medicaid recipient. Since to not allow the claim in the case before it would benefit only the recipient's adult son, the Court allowed the claim and refused to apply the statute literally.

While neither the *Nass* nor the *Samuelson* case dealt with the issue of joint tenancy property, they did confront, and reject, the notion that section 1396p(b) must be applied literally and mechanically. Rather, they

allowed the State's claim for reimbursement when not to do so would run contrary to congressional intent.

In short, the Court of Appeal was wrong when it held that the word "estate" has one, and only one, immutable "common law" "plain meaning". To the contrary, the word "estate" should have been construed in light of the congressional purpose for the statute in which it is found.

II

THE COURT OF APPEALS' NARROW CONSTRUCTION OF "ESTATE" CREATES DISTINCTIONS WITHOUT A DIFFERENCE, NOT SUPPORTED BY CONGRESSIONAL INTENT.

The Medicaid program was enacted in order to provide "medical assistance on behalf of families with dependent children and of aged, blind, or disabled individuals, *whose income and resources are insufficient* to meet the costs of necessary medical services." 42 U.S.C. § 1396. However, in measuring the "resources" of the family or individual, the State cannot count the family's or individual's interest in the home in which they live. 42 U.S.C. § 602(a)(7)(B) (for families); 42 U.S.C. § 1382b(a)(1) (for aged, blind or disabled individuals). By excluding the home from countable "resources", a person with an asset worth tens or hundreds of thousands of dollars is deemed to have no "income or resources" and

thereby qualify for free medical assistance. By allowing that anomaly, Congress effectuates the laudatory purpose of allowing persons to remain in the family home. It necessarily follows, then, that a person who is receiving free medical assistance as a needy person may in fact have a sizable "estate", namely, his or her interest in the home which is not being counted as a "resource." This means, of course, that persons with property worth tens or hundreds of thousands of dollars are receiving free medical assistance at considerable cost to the State and federal taxpayers.

To counterbalance that anomaly, Congress enacted 42 U.S.C. § 1396p(b), which, although prohibiting recovery of correctly paid benefits generally, makes an exception for assistance received after the person's 65th birthday, in which event the State may seek reimbursement from "his estate." Thus, Congress was allowing the State, following the beneficiary's death, to seek recovery from the property (i.e., "estate") that but for the "resources" exclusion rules would have had to have been sold by the recipient in his/her lifetime in order to pay medical expenses.

The California Supreme Court recognized the relationship between the "resources" exclusion rule and the "estate" recovery rule in *Kizer v. Hannah* (1989) 48 Cal.3d 1, at 6.

In other words, Congress allowed the recipient to live in his home during his lifetime and still receive free medical assistance, but on his death the property would be subject to the State's claim for reimbursement. In that context, there is no logical distinction whatsoever between property that passes by way of testate or intestate succession and property that passes by way of joint tenancy survivorship. In either case, the beneficiary has passed a noncountable "resource" to a survivor. The State's right to seek reimbursement should prevail in one case just as much as in the other.

It is well known that joint tenancies are used widely as a device for avoiding probate and its related costs and inconveniences. By adopting the plaintiffs' narrow construction of the federal statute, the majority endorsed a blueprint for avoidance which, once it becomes known, will undoubtedly be even more widely used. (That word of the "loophole" created by the Court of Appeals' decision is being spread is undeniable. For example, the December 13, 1989 issue of Senior Spectrum, a weekly newsletter subscribed to by senior citizens in ten California counties, contained a front page story on this case.)

Absent clear evidence of Congressional intent to do so, the Court should not have construed the statute in

a manner that creates a loophole that could virtually nullify the obvious purpose of the statute.

Had the Court of Appeals considered the congressional purpose for 42 U.S.C. § 1396p(b), it would have concluded, as did the district court and the dissent, that the definition of "estate" supported by HHS would allow California "to administer a rational system of recovery" and "to further, in as sensible a fashion as possible, the congressional purposes behind the statute."

CONCLUSION

The Court of Appeals reached the wrong conclusion on an important question of law that can effect the recovery of tens of millions of dollars - - money that is needed to meet the ever increasing costs of the Medicaid program. In fact, it is respectfully submitted that the decision is so patently wrong that this Court could grant this petition for certiorari and summarily reverse the Court of Appeals' decision without additional briefing and argument.

DATED: December 28, 1989

Respectfully submitted,

JOHN K. VAN DE KAMP
Attorney General

JOHN J. KLEE, JR.
Deputy Attorney General
(Counsel of Record)

Attorneys for Petitioners

APPENDIX

TABLE OF CONTENTS

	Page
Opinion, United States Court of Appeals, Citizens Action League, et al. v. Kizer, et al., October 23, 1989	1
Order Denying Motion for Summary Judgment, United States District Court, Citizens Action League, et al. v. Kizer, et al., September 29, 1987	17
Welfare and Institutions Code § 14009.5, effective through 1989	29
Welfare and Institutions Code § 14009.5, as amended effective January 1, 1990	30

887 F.2d 1003

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CITIZENS ACTION LEAGUE, a Non-Profit Corporation; ANGELINA AIELLO; MYRTLE SUNTKIN; GESTNER HODGE; and MARY DUNKER, on Behalf of Themselves and All Others Similarly Situated,	)	No. 88-15044
	)	D.C. No. C-86-1596 SAW
Plaintiffs-Appellants,	)	OPINION
v.	)	
KENNETH KIZER, Director, State Department of Health Services; STATE OF CALIFORNIA DEPARTMENT OF HEALTH SERVICES; LOUIS W. SULLIVAN,* Secretary, United States Department of Health and Human Services,	)	
Defendants-Appellees.	)	

Appeal from the United States District Court
for the Northern District of California
Stanley A. Weigel, Senior District Judge, Presiding

Argued and Submitted
June 5, 1989-San Francisco, California

Filed October 23, 1989

Before: Thomas Tang, William C. Canby, Jr. and
Diarmuid F. O'Scannlain, Circuit Judges

---

*Louis W. Sullivan is substituted for his predecessor, Otis R. Bowen, as Secretary of Health and Human Services, Fed.R.App.P.43(c)(1).

Opinion by Judge O'Scannlain; Dissent by Judge Canby

SUMMARY

Medicare

Reversing the judgment of the district court, the court held that Medicaid law does not authorize California to recover benefits from a deceased recipient's estate which passes by right of survivorship.

Plaintiffs are a class comprised of persons who by right of survivorship have succeeded to property they formerly held in joint tenancy with a benefits recipient. They contended that Congress's use of the word "estate" in the recoupment provision of the Medicaid section. Title XIX of the Social Security Act, 42 U.S.C. § 1396 *et seq*. limits a state's recovery to property which descends to the recipients's heirs or through his will upon death.

[1] Because Congress did not define "estate" in the Act, the court looked to the common law meaning in construing this statutory construction. [2] At common law, "estate" excluded interests in a decedent's property that were formerly held in joint tenancy. Because the California statute is not so limited, the court found appellants' argument compelling. [3] Appellees

contended that a letter from the Administrator of the United States Health Care Financing Agency to the Director of the California Department of Health Services decided the issue in their favor, [4] arguing that the letter constitutes a ruling that supports the Department's definition of the word "estate". [5] The letter appears to have been written for purposes of this litigation only and its pronouncements are not ones of long standing. [6] The district court premised its judgment primarily upon the rationale that appellants' position calls for the preclusion of recoupment based on what it found to be a technical and easily-manipulated distinction. [7] This rationale presupposes that appellants entered into joint tenancy for reasons of shrewdness. The evidence in the record does not support such a broad generalization. Even as to those who might have entered and will enter into joint tenancy merely for reasons of shrewdness, there is nothing improper or inappropriate.

Judge Canby dissented in a separate opinion, stating that because a broad definition of "estate" permits California to administer a rational system of recovery, and the common law definition does not, he would opt for the former.

COUNSEL

Joel R. Reynolds, Western Center on Law and Poverty, Inc., Los Angeles, California, for the plaintiffs-appellants.

John J. Klee, Deputy Attorney General, State of California, Joseph Stein, Assistant Regional Counsel, United States Department of Health & Human Services, San Francisco, California, for the defendants-appellees.

OPINION

O'SCANNLAIN, Circuit Judge:

This appeal turns on whether California has made a permissible interpretation of federal Medicaid law to authorize recovery of benefits from a deceased recipient's "estate." Plaintiffs are a class comprised of persons who by right of survivorship have succeeded to property they formerly held in joint tenancy with a benefits recipient. They argue that Congress's use of the word "estate" in the recoupment provision limits a state's recovery to property which descends to the recipient's heir or the beneficiaries of the recipient's will upon death. Because the property California seeks to reach passes by right of survivorship-thereby bypassing probate altogether-they argue that the California statute is impermissibly broad and is inconsistent with federal law. We agree.

I

In 1965, Congress established "Medicaid," a cooperative federal-state health benefits assistance program designed to provide necessary medical services to low income persons. Title XIX of the Social Security Act, codified at 42 U.S.C. § 1396 *et seq.* ("the Act"); *see also Schweiker v. Gray Panthers*, 453 U.S. 34, 36-37 (1981). State governments principally administer the program, and in so doing must abide by the requirements of the Act to qualify for receipt of federal Medicaid funds, *Beltran v. Myers*, 701 F.2d 91, 92 (9th Cir.), *cert.denied sub nom., Rank v. Beltran*, 462 U.S. 1134 (1983). California participates in the Medicaid program through its California Medical Assistance Program ("Medi-Cal"), which provides medical services to aged, disabled, and needy persons. Cal. Welf. & Inst. Code §§ 14005.1, 14050.1, 14051 (West Supp. 1989); *see generally Lynch v. Rank* 747 F.2d, 528 (9th Cir. 1984), *modified*, 763 F.2d 1098 (9th Cir. 1985).

The Act requires state plans, among other things, to comply with its provisions "with respect to liens, adjustments and recoveries of medical assistance correctly paid, and transfers of assets." 42 U.S.C. § 1396a(a)(18) (1982). In turn, setion 1396p of the Acct permits states to recover the costs of Medicaid benefits directly from the former recipient's "estate." 42 U.S.C. § 1396p(b)(1)(B). Pursuant to this federal authority, California enacted as part of its Medi-Cal statutory scheme a provision that authorizes the California Department of Health Services. ("Department" or "DHS") to "claim against the estate of the decedent, *or against any recipient of the property of that decedent by distribution or survival* an amount equal to the

[Medi-Cal] payments received." Cal. Welf. Inst. Code § 14009.5 (West Supp. 1989) (emphasis supplied).

Appellant California residents who have been subjected to operation of the cited portion of the statute filed an action in California State Superior Court, seeking a writ of mandate and permanent injunction prohibiting the Department from recovering or seeking to recover Medi-Cal benefits correctly paid from any person who succeeds by survivorship to property he owned in joint tenancy with a former benefits recipient.[1/] The Department removed the action to the United State District Court for the Northern District of California under 28 U.S.C. § 1441(a).

---

1. While appellants presented seven separate claims in their complaint, the district court directed the entry of final judgment only as to one such claim under Fed.R.Civ.P.54(b). Thus, only appellants' request for a writ of mandate enjoining operation of section 14009.5, based on the allegation that its operation violates provisions of the Medicaid law, is property before us on appeal.

After the federal district court certified appellants as a plaintiff class,[2/] appellants moved for summary judgment, alleging that section 14009.5 is inconsistent with 42 U.S.C. § 1396p(b)(1)(B). The district court denied the motion, reasoning that were it to rule for appellant, only those individuals shrewd enough to enter a joint tenancy with a Medi-Cal recipient would be protected while those individuals not shrewd enough to enter a formal joint tenancy would be subject to claims for recovery. *Citizens Action League v. Kizer*, 670 F.Supp. 874, 878 (N.D. Cal. 1987).

Thereafter, the district court granted summary judgment in favor of defendants.

---

2. Specifically, the class as certified includes California residents or landowners who "(1) have succeeded or will succeed to real property through right of survivorship upon the death of a Medi-Cal recipient; (2) have been or will be subject to a claim pursuant to Welfare & Inst. Code § 14009.5 for recoupment or recovery from said property of Medi-Cal benefits correctly paid to the decedent."

II

We must determine whether California Welfare & Institutions Code section 14009.5, which allows for recoupment of Medi-Cal benefits from surviving joint tenants, is inconsistent with federal Medicaid law. In so doing, we must construe 42 U.S.C. § 1396p(b)(1)(B) (1982).

In construing a statute, we look first to its plain meaning. *United States v. 594,464 Pounds of Salmon*, 871 F.2d 824, 825-26 (9th Cir. 1989). If the statutory language is unambiguous, its plain meaning controls unless Congress has "clearly expressed" a contrary legislative intention. *Id.*at 826. In addition, unless Congress has made manifest an intent to the contrary, a presumption obtains that when Congress uses a common law term, it intends to use it in its common law sense. *See, e.g., Gilbert v. United States*, 370 U.S. 650, 655 (1962); *Black v. Commissioner*, 765 F.2d 862, 864-65 (9th Cir. 1985).

[1] Federal Medicaid law limits a participating state's ability to recoup benefits as follows: "No adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan may be made, except . . . in the case of any other individual who was 65 years of age or older when he received such assistance, from his *estate*." 42 U.S.C. § 1396p(b)(1)(B) (1982) (emphasis supplied). Because Congress did not define "estate" in the Act, we look to its common law meaning in construing this statutory section.

[2] At common law, "estate" excluded interests in a decedent's property that were formerly held in joint tenancy. *Powell on Real Property* ¶ 617(3)(1986); *see also In re Estate of Harris*, 88 Misc.2d 60, 387 N.Y.S.2d 796 (Sur.Ct. 1976), *aff'd*, 61 A.D.2d 881, 402 N.Y.S.2d 978 (1978); *Citizens Action League*, 670 F.Supp. at 877. Because the California statute is not so limited,[3] appellants' argument is compelling.

[3] Nonetheless, appellees contend that a letter from the Administrator of the United States Health Care Financing Agency (HCFA) to the Director of the California Department of Health Services decides the issue dispositively in their favor. HCFA is the division of the federal Department of Health and Human Services ("HHS") charged with administering the federal Medicaid program. As it pertains to this litigation, the letter states that:

> The Health Care Financing Administration has not construed "estate" in the context of 42 U.S.C. § 1396p(b)(1)(B) as being limited to the

---

3. Indeed, even the language of the California statute itself distinguishes between "the estate of the decedent" and property that passes by way of "distribution or survival." Cal.Welf. & Inst. Code § 14009.5 (authorizing Department to "claim against the estate of the decedent, or against any recipient of the property of that decedent by distribution or survival an amount equal to the [Medi-Cal] payments received").

> probate estate, nor has it issued any definitive pronouncements on this question. Therefore, States are not bound to consider "estate" to mean "probate estate." Thus, if State law does not required that "estate" be limited to "probate estate," that State would not be precluded from considering property which passes by operation of survivorship under title held in joint tenancy to be part of the deceased's estate for purposes of recoveries under Medicaid.

Letter from William L. Roper, M.D., HCFA Administrator, to Kenneth W. Kizer, Director of California DHS (Sept. 4, 1986).

[4] The view of a statute by the agency charged with its administration is entitled to considerable deference. *Chemical Mfrs. Ass'n v. Natural Resources Defense Council*, 470 U.S. 116, 125 (1985). Such a view need not be the only permissible statutory construction, but rather need simply represent a sufficiently rational one to preclude a court from substituting its judgment for that on the agency. *Id.* Appellees argue that the HCFA letter constitutes a "ruling" that supports the Department's definition of the word "estate" in section 14009.5.

[5] We concur in the district court's reasoning that even if the letter represented a "ruling," it would not be entitled to the great deference of which the Court spoke in *Chemical Mfrs.* "because [the letter] lacks the indicia of deliberative administrative review." *Citizens*

Action League, 670 F.Supp. at 876. The district court noted that the subject matter of the letter is not one in which the agency possesses specialized expertise or one which was beyond judicial competence; indeed, the letter discusses statutory construction of a legal term, a task particularly well-suited for courts. *Id.* at 876-877. In addition, the court found that "the letter appears to have been written for the purposes of this litigation only," and thereby concluded that its pronouncements are not ones of long standing. *Id.* at 877. Indeed, the letter is dated September 4, 1986, some six months after the commencement of appellants' action. In contrast, the "ruling" at issue in *Chemical Mfrs.* was a regulation that had remained relatively unchanged in its interpretation of the statute for nearly seven years since the agency's original promulgation. *Chemical Mfrs.*, 470 U.S. at 124 n.10, 134.

[6] Despite its conclusions that the HCFA letter is not entitled to judicial deference to a degree sufficient to compel a judgment in appellees' favor and that the common law meaning of "estate" supports appellants, the district court nonetheless proceeded to order judgment for appellees. It premised its judgment primarily upon the rationale that appellants' position calls for the preclusion of recoupment based on what it found to be a technical and easily-manipulated distinction. That is, the court found that the congressional policy of encouraging at-home care is not equitable implemented when the only care providers to be shielded from recoupment are those who have been "shrewd enough to enter into a joint tenancy with a Medi-Cal recipient during his or her life."

Citizens Action League, 670 F. Supp. at 878. Those who would escape such recoupment "may be relatively well-off, or else have provided little in the way of medical or other care to the recipient." *Id.* On the other hand, the court asserted, "individuals who provide live-in care to elderly Medi-Cal patients but who are not shrewd enough to enter into a formal joint tenancy will be subject to claims for recovery upon any portion of the estate of the deceased recipient obtained through a will or intestacy." *Id.* It apparently decided that because the congressional policy objective would not be effectuated as to all in the class (or as to those at-home providers who succeed to the recipient's property via probate), it should not be effectuated as to any.

[7] The district court's rationale in this regard presupposes that appellants entered into joint tenancy for reasons of "shrewdness." To the extent it is relevant, however, the evidence in the record does not support such a broad generalization. On the contrary, it appears that many of those in the appellant class became joint tenants with the now-deceased recipients under arrangements that Congress wanted to encourage under which at-home care services were provided in exchange for a place to live, both during the provision of care and after the recipient's death. Indeed, even as to those who might have entered and will enter into joint tenancy merely for reasons of

"shrewdness,"[4] there is nothing improper or inappropriate.

The district court also appeared to be concerned that to rule for appellant would be to allow for the recoupment exception to be "swallowed" by the joint tenancy "exception-to-the-exception." Nevertheless, this is precisely what Congress provided; the authors of the provision could easily have made clear their intent to include joint tenants. *See Gilbert*, 370 U.S. at 658-59 ("Of course, Congress could broaden the concept of 'federal' forgery by statutory definition. We hold only that it has not yet done so"). Congress has made the policy decision and individuals affected are certainly entitled to rely on it, even in the fact of state action contrary to congressional intent.

III

Because "estate" under common law does not include property formerly held in joint tenancy, and because the HCFA letter is not compelling on this issue, we conclude that the California statue is impermissibly broad and is inconsistent with Medicaid law.

REVERSED.

---

4. The number who have entered into joint tenancies to avoid recoupment of Medi-Cal benefits would seem to be negligible at present, however, given the fact that the California statute as written does not allow joint tenants to escape recovery. Cal.Welf. & Inst. Code § 14009.5.

CANBY, Circuit Judge, dissenting:

As the majority has made clear, there is some doubt what Congress meant when it permitted a state to recover benefits properly paid to a person over ag 65 from that person's "estate." 42 U.S.C. § 1396p(b)(1)(b). The common law definition of "estate," which the majority adopts, imposes on the states a system that makes recovery depend on a technical distinction that has nothing necessarily to do with the purposes of the Medicaid program or of the exception permitting recovery of benefits furnished to persons over age 65. As the district court pointed out, an heir that furnishes nursing assistance to a Medicaid recipient in return for a bequest of the recipient's residence will be subject to a claim by the state. A joint tenant who has rendered no services and is not in need will be subject to a claim by the state. A joint tenant who has rendered no services and is not in need will be subject to no such claim when he or she takes the residence by survivorship. Whether the state may seek its recovery depends on a legal formality, not on any distinction rationally related to Congress' purposes.

California's interpretation of section 1396p(b)(1)(B), supported by the Secretary of Health and Human Services, eliminates this irrationality by permitting recovery form heirs and joint tenants alike. When hardship is involved, the State makes allowances for that exigency across the board, regardless whether an heir or

joint tenant is involved. Thus, California's statute does not apply at all when the recipient passes a residence to a surviving spouse, or minor or disabled children. When enforcement of the state's statute against heirs or survivors would cause substantial hardship, the Department has authority, which it has exercised, to waive its claim in whole or part. California also asserts that it does not enforce its claims to deprive the heir or joint tenant of a residence; the state accepts a lien enforceable only at sale.

Because a broad definition of "estate" permits California to administer as rational system of recovery, and the common law definition does not, I would opt for the former. The goal of statutory interpretation is to further, in as sensible a fashion as possible, the congressional purposes behind the statute. California's construction, supported by the Secretary, does that. The common law definition does not. I would affirm.

CITIZENS ACTION LEAGUE, a Non-profit Corporation; Angelina Aiello; Myrtle Suntken; Gestner Hodge; and Mary Dunker, on Behalf of Themselves and All Others Similarly Situated, Plaintiffs.

v.

Kenneth KIZER, Director, State Department of Health Services; California Department of Health Services; Otis R. Bowen, Secretary, United States Department of Health and Human Services, Defendants.

No. C-86-1596 SAW.

United States District Court, N.D. California.

Sept. 29, 1987.

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

WEIGEL, District Judge.

Introduction

In this class action, plaintiffs challenge defendant California Department of Health Services' practice of recovering the costs of state health benefits from former joint tenants of deceased recipients. The Department administers the California Medical Assistance Program ("Medi-Cal"), which provides medical services to aged, disabled, and needy persons. Medi-Cal constitutes California's participation in the larger federal medical assistance program known as "Medicaid." Medicaid programs are administered principally by the participating states, and the programs' costs are shared with the federal government.

Defendants are the California Department of Health Services ("the Department")' Kenneth Kizer, director of the Department; and Otis R. Bowen, secretary of the United States Department of Health and Human Services ("HHS"). The plaintiff class consists of persons in California who own or have owned property in "joint tenancy" with a Medi-Cal recipient. A "joint tenancy" is a form of ownership in which each joint tenant owns an undivided interest in certain property. *Black's Law Dictionary* 1313 (1979). The distinguishing feature of a joint tenancy is the "right of survivorship," by which, upon the death of one of the joint tenants, his interest vanishes, and the entire interest in the property passes to the surviving joint tenants. Most importantly for purposes of this action, the estate of the deceased joint tenant retains no interest in the property. *Powell on Real Property* ¶ 617[3].

Under Cal.Welf. & Inst.Code ¶ 14009.5, a joint tenant who succeeds by right of survivorship to the property of a Medi-Cal beneficiary may be liable to repay the costs of the decedent's benefits. Plaintiffs argue that this provision violates the federal Medicaid Act, 42 U.S.C. §§ 1396 et seq. ("Medicaid Act"). The Medicaid Act requires state plans to "comply with the provisions of section 1396p of this title with respect to liens, adjustments and recoveries of medical assistance correctly paid. . . ." 42 U.S.C. § 1396a(a)(18). Section 1396p, in turn, permits recovery of the costs of benefits to individuals 65 years of age or older from their "estates." 42 U.S.C. § 1396p(b)(1)(B).

The term "estate" is not defined in the Medicaid Act. Plaintiffs argue that the term refers only to property descending to the recipient's heir or the beneficiaries of his will. Therefore, they argue, section 1396p(b)(1)(B) prohibits the Department from seeking to recover costs from joint tenants of a deceased recipient since the recipient's interest in the joint tenancy does not become part of his estate at death, but rather passes immediately to the other joint tenants by right of survivorship. In their motion for summary judgment, plaintiffs seek a decree (1) enjoining defendants from attempting to recover Medi-Cal benefit from persons who, as joint tenant, receive property of a deceased recipient by right of survivorship, and (2) requiring defendants to reimburse members of the class who have paid on claims for recovery by the Department.

Summary of facts and equitable considerations.

Plaintiffs assert, and defendants do not dispute, that California is the only state that authorizes the recovery of correctly paid medical assistance benefits from joint tenancy property. Plaintiffs have submitted a dozen declarations of members of the class describing the hardship that allegedly results from the Department's attempts to recover costs under Cal.Welf. & Inst.Code § 14009.5. Typically, the declarant is elderly, indigent, and disabled. He or she became a joint tenant in the home of a Medi-Cal recipient, often a relative, for whom ie or she provided nursing or other home support, thereby sparing the state the costs of institutional care. After several years, the Medi-Cal recipient died, and the declarant succeeded by right of survivorship to full ownership of the recipient's home. Soon thereafter, he or she received a letter from the Department claiming several thousand dollars for recovery of monies correctly paid for heath care rendered to the deceased recipient. The Department's letter caused great anxiety to the declarant, who was already afflicted with poverty and illness. In some cases, declarant sold their homes in order to pay the
Department's claim, resulting in painful upheaval.

State defendants argue that these declarations distort the equities. Section 14009.5 does not permit recovery where the deceased recipient leaves a surviving spouse, a surviving child under 21, or a surviving child who is blind or totally disabled. In addition, the statute

allows the Department to waive all or part of its claim for recovery if it determines that enforcement would result in substantial hardship to dependents of the recipient. In fact, the parties agree, the Department waived its claims against some of the members of the plaintiff class. The declaration of a Department collection agent states that the Department never requires people who have acquired a residence from a deceased recipient to sell the residence to satisfy a Medi-Cal claim. Instead, the Department accepts a lien upon the home which is not collected until the property is sold. Finally, State defendants argue that the relief sought by plaintiffs will not alleviate the hardship they allege, since only joint tenants will be protected from recovery claims. Other equally sympathetic individuals, who provided live-in care to elderly Medi-Cal patients but who were not shrewd enough to enter into a formal joint tenancy, will be subject to claims for recovery upon any portion of the estate of the deceased recipient obtained through a will or intestacy.

Administrative agency's interpretation.

The parties seem to agree that this motion ultimately turns upon the construction of the term "estate" in 42 U.S.C. § 1396p(b)(1)(B). Defendants rely heavily upon a letter from the Administrator of the U.S. Health Care Financing Agency (HCFA), a division of HHS responsible for federal administration of the Medicaid program. The letter, dated September 4, 1986, is addressed to defendant Kizer. The letter states that "[t]he Health Care Financing Administration has not construed

'estate' in the context of 42 U.S.C. § 1396p(b)(1)(B) as being limited to the probate estate, nor has it issued any definitive pronouncements on this question. Therefore, states are not bound to consider 'estate' to mean 'probate estate'. State defendants argue that the letter constitutes a "ruling" in favor of the Department's interpretation of the term "estate." As such, it would be entitled to "considerable" deference, and should be sustained as long as it is "reasonable." *Chemical Mfrs. Ass'n v. Natural Res. Defense Council*, 470 U.S. 116, 105 S.Ct. 1102, 84 L.Ed.2d 90 (1985).

Plaintiffs correctly question whether the letter constitutes a "ruling" of the HCFA. The letter explicitly states that the HCFA has not "issued any definitive pronouncement on this question." Defendants present no authority suggesting that such a letter carries the force of a regulation or a ruling. "Defendants provide no explanation of its origin, the procedures that led to its preparation, or its intended use.. . ." Reply at 4. Plaintiffs suggest that the letter was requested by defendants for the purpose of influencing the outcome of this litigation. HHS itself characterized the letter as "disavow[ing] authority for the construction of 'estate' in this special context . . . ," although in its Reply HHS seems to have reversed itself, arguing that the letter constitutes an interpretation of the term to which deference is owed.

Even if the letter does constitute a "ruling" of the HCFA, plaintiffs argue, it is not entitled to the great deference given to administrative regulations in recent Supreme Court opinions, e.g., *Chemical Mfrs.*, 470 U.S.

116, 105 S.Ct. 1102, 84 L.Ed.2d 90; *Chevron U.S.A. v. Natural Res. Def. Council*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed 694 (1984), because it lacks the indicia of deliberate administrative review found in those cases. Specifically, the regulations in *Chemical Mfrs.* and *Chevron U.S.A.* were promulgated pursuant to the notice and comment procedures of the Administrative Procedure ACt, 5 U.S.C. §§ 553 et seq. As such, plaintiff argue persuasively, the letter should be judged by older doctrines of statutory construction under which the weight to be given to an agency interpretation depended on factors such as the extent to which the subject matter is within special administrative competence and beyond judicial competence (the HCFA letter is signed by an official giving his credentials as "M.D.", whereas the task of statutory construction is typically performed by courts); whether the rule is one of long standing (the letter appears to have been written for the purposes of this litigation only); and whether the statute has been reenacted by legislators who know of the content of the rule (not applicable to the letter). K. Davis, *Administrative Law Treatise* ¶ 5.05, at 315 (1958).

Common law meaning of "estate"

Given the lack of a statutory definition of the term "estate" as used in section 1396p(b), plaintiffs invoke the longstanding doctrine that in the absence of anything to the contrary, it is presumed that Congress uses words in their common-law sense. E.g., *Gilbert v. United States*, 370 U.S. 650, 655, 82 S.Ct. 1399, 1402, 8 L.Ed.2d 750 (1962); *Black v. Comm'r of Internal Revenue* 765 F.2d 862, 864-

65 (9th Cir. 1985). Plaintiffs offer extensive citations demonstrating that the common-law meaning of the term "estate" refers to interests of the deceased in property at death and before distribution via will or intestacy. E.g., *Tooley v. Comm'r of Internal Revenue*, 121 F.2d 350, 357 (9th Cir.1941). At common law, and by statute in many jurisdictions, the "estate" at death does not include interests in the property formerly held in joint tenancy. E.g., *Powell on Real Property* ¶ 617[3] (1986); Cal.Probate Code § 647(a). Thus, plaintiff conclude, Congress intended the term "estate" in 42 U.S.C. § 1396p(b)(1)(B) to exclude interests in joint tenancies, and Cal.Welf. & Inst. Code § 14009.5 therefore violates this provision of the Medicaid Act.

The only case on point cited by any of the parties supports the plaintiffs' interpretation of the statutory meaning of "estate." In *In Re Estate of Harris*, 88 Misc. 2d 60, 387 N.Y.S.2d 796 (Sur.Ct. 1976), aff'd, 61 A.D.2d 881, 402 N.Y.S.2d 978 (1978), the court held that assets held by the recipient in a "tenancy by the entirety" were not part of his estate at death and therefore could be not used to satisfy a claim for recovery. A "tenancy by the entirety" is a joint tenancy arrangement between husband and wife; as with other joint tenancies, its distinguishing characteristic is the right of survivorship. *Black's Law Dictionary* 1313-14 (5th Ed.1979).

State defendants argue that *Harris* is inapposite because the state sought reimbursement form the estate of the deceased wife for the costs of Medicaid benefits paid to the predeceased husband. While this is a true

statement of the facts of *Harris*, it is irrelevant to the current motion. The court barred recovery because "on the death of the first tenant by the entirety of real property, his estate ceases to have any interest in such property," 88 Misc.2d at 64, 387 N.Y.S.2d at 799, and hence the husband's estate had "no assets which can be applied to the claim. Upon [the husband's] death, title to the real estate became whole in his surviving spouse, and was not subject to payment of his debts." 88 Misc.2d at 61-62, 387 N.Y.S.2d at 797.

HHS argues that *Harris* is inapposite because it construes the term "estate" according to the law of the state of New York. Thus, it argues, the meaning of "estate" was not fixed upon enactment of 42 U.S.C. § 1396p(b), but rather follows the meaning of the term under the laws of each participating state. The Court need not resolve this issue. Even assuming the correctness of HHS's reading of *Harris*, the case supports plaintiffs, who have demonstrated that under California law, a decedent's "estate" does not include property formerly held in joint tenancy.

Defendants argue that the term "estate" has other common law meanings in other legal contexts. For example, the "estate" managed by a conservator includes property held in joint tenancy by the incompetent person. Cal.Probate Code §§ 1801, 2552. However, defendants fail to provide authority suggesting an "estate" at death is construed at common law to include property formerly held in joint tenancy.

Although the common law meaning of "estate" favors plaintiffs, it is not conclusive. "As used in statutes, if not expressly defined, the import of the term 'estate' depends in a great degree on its association with other expressions, and *must be found from the context and purpose of the statute*, and the fixed absolute sense of the word in the abstract must give way to the connection in which it is used." 31 C.J.S. *Estates* § 1, at 9 (1964) (emphasis added) (footnotes omitted); *see also McNally v. United States*, __ U.S. ___, 107 S.Ct. 2875, 97 L.Ed.2d 292 (1987) and *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 471, 98 S.Ct. 2454, 2459, 57 L.Ed.2d 351 (1978) (rigid adherence to technical meaning of words should be avoided where it would conflict with underlying purpose of statute). Thus, the Court must go on to consider the purpose of section 1396p and the Medicaid Act as a whole.

Legislative history and general purpose of statute

Neither party adduces legislative history directly on point. The state defendants point out that in measuring the wealth of a potential recipient, states may not include the value of his interest in the home in which he lives. See 42 U.S.C. §§ 602(a)(7)(B) & 1382b(a)(1). This effectuates the laudable purpose of allowing persons to remain in the family home. The necessary corollary is that in some cases, persons with property worth tens of thousands of dollars or more are receiving free medical assistance at considerable cost to state and federal taxpayers. The state defendants argue that section

1396p(b) was designed to recover some of the cost of that medical assistance after the recipient
dies. That purpose, they persuasively argue, should not be thwarted by the technical device of joint tenancy.

The legislative history of the predecessor provision to 42 U.S.C. § 1396p(b) is inconclusive. It states that the "provision was inserted in order to protect the individual and his spouse from the loss of their property, usually the home, during their lifetime." S.Rep. No. 1856, 86th Cong., 2d Sess., *reported in* 1960 U.S. Code Cong. & Admin. News 3608, 3615. As HHS persuasively argues, it is not inconsistent with this statutory objective to construe "estate" so as to allow recovery from property held in joint tenancy with a person other than the decedent's spouse. On the other hand, plaintiffs' more narrow construction of "estate" is equally faithful to this congressional objective.

Plaintiffs cite the legislative history of the Medicaid Act as a whole for the proposition that Congress intended "to help such individuals and families attain or retain capability for independence or self-care." S.Rep. No. 404, 89 Cong. 1st Sess. 204, *reprinted in* 1965 U.S. Code Cong. & Admin. News 1943, 2144. This policy, plaintiffs argue, is undermined when the Department seeks recovery from surviving joint tenants, discouraging voluntary provision of home-care by would-be tenants. Congress reemphasized this policy when it amended the Medicaid Act in enacting the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"). See House Energy and Commerce Committee, *Medicaid and Medicare Part B Budget*

Reconciliation Amendments of 1982, H.R.Rep. No. 757, 97th Cong., 2d Sess., 7 (1982).

The weakness of this argument is the uncertain and incomplete correlation between those who furnish assistance to Medi-Cal recipients and those who enter into joint tenancies with them. As the state defendants persuasively argue, the judgment sought by plaintiffs would protect only those shrewd enough to enter into a joint tenancy with a Medi-Cal recipient during his or life. These joint tenants may be relatively well-off, or else have provided little in the way of medical or other care to the recipient. On the other hand, individuals who provide live-in care to elderly Medi-Cal patients but who are not shrewd enough to enter into a formal joint tenancy will be subject to claims for recovery upon any portion of the estate of the deceased recipient obtained through a will or intestacy.

For the foregoing reasons,

IT IS HEREBY ORDERED that plaintiffs' motion for summary judgment is denied.

California Welfare & Institution Code § 14009.5
(effective through 1989)

Notwithstanding any other provision of this chapter, when a decedent has received health care services under this chapter of Chapter 8 (commencing with Section 14200) the department may claim against the estate of the decedent, or against any recipient of the property of that decedent by distribution or survival an amount equal to the payment for the health care services received. The department may not claim where the eligible person was under 65 when services were received, or where there is a surviving spouse, or where there is a surviving child who is under age 21 or who is blind or permanently and totally disabled, within the meaning of the Social Security Act.

The department may waive its claim, in whole or in part, if it determines that enforcement of the claim would result in substantial hardship to other dependents of the individual against whose estate the claim exists.

Welfare and Institutions Code § 14009.5
(As amended effective January 1, 1990.)

(a) Notwithstanding any other provision of this chapter, when a decedent has received health care services under this chapter or Chapter 8 (commencing with Section 14200) the department may claim against the estate of the decedent, or against any recipient of the property of that decedent by distribution or survival an amount equal to the payments for the health care services received.

(b) The Department may not claim in any of the following circumstances:

(1) The eligible person was under 65 when services were received.

(2) Where there is any of the following:

(A) A surviving spouse.

(B) A surviving child who is under age 21.

(C) A surviving child who is blind or permanently and totally disabled, within the meaning of the Social Security Act (42 U.S.C.A. sec. 1382c).

(c) (1) The department shall waive its claim, in whole or in part, if it determines that

enforcement of the claim would result in substantial hardship to other dependents, heirs, or survivors of the individual against whose estate the claim exists.

(2) The department shall notify individuals of the waiver provisions and the opportunity for a hearing to establish that a waiver should be granted.

(3) Waivers shall be granted consistent with emergency regulations, which the department shall adopt pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, to implement this section. The adoption of regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, or safety. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, emergency regulations adopted by the department in order to implement this section shall not be subject to the review and approval of the Office of Administrative Law. The department shall adopt and file these regulations with the Secretary of State not later than March 1, 1990. These regulations shall become effective immediately upon filing with the Secretary of State.

The regulations shall, at a minimum, consider all of the following:

(A) The income, resources, and liabilities of any dependent, heir or survivor.

(B) The length of time the dependent, heir, or survivor lived with the decedent and the level and type of care provided by the dependent, heir, or survivor which delayed or prevented institutional placement of the eligible person.

(C) The dependent's, heir's or survivor's employability.

(d) The department shall comply with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code within the 120-day period during which the emergency regulations adopted by the department pursuant to subdivision (c) are in effect.

(e) For purposes of this section "dependents" includes, but is not limited to, immediate family or blood relatives of the decedent.